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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,625	11/21/2003	Charles R. Barmore	D-43664-01	3475

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CRYOVAC, INC.
SEALED AIR CORP
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EXAMINER

MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/719,625

Applicant(s)

BARMORE ET AL.

Examiner

Michael C. Miggins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/27/06 has been entered.

REJECTIONS WITHDRAWN

2. All of the 103 rejections set forth or maintained in the final rejection of 5/26/06, pages 2-3, paragraphs 2-4 have been withdrawn.

REJECTIONS REPEATED

3. There are no rejections repeated.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al. (US 5529833) in view of Putnam et al. (US 6794191) and Inoue et al. (US 5358876).

Speer discloses a rigid container (column 3, lines 64-67) comprising an oxygen barrier having an oxygen transmission rate of no more than $100 \text{ cc/m}^2/24\text{hr}$ at 25 degrees C, 0% RH, 1 atm (column 7, lines 12-28, column 9, lines 46-62), an oxygen scavenger, all in various configurations (column 11, lines 4-25, column 12, lines 12-32).

The difference between the instant claims and Speer is that Speer does not disclose an oxygen indicator comprising a luminescent compound.

Putnam discloses an oxygen indicator in a polymer film (column 2, lines 54-67) laminated on a barrier film (column 3, lines 55-61), wherein the oxygen indicator has a luminescent compound (column 5, lines 10-20) for use in food packaging as an inner or outer layer (column 6, lines 1-15) for the purpose of accurately detecting oxygen in packaging (applies to instant claims 1-2 and 4). Putnam also discloses wherein the oxygen indicator is substantially shielded by oxygen barrier layers from oxygen in the environment surrounding the container, and from oxygen in any headspace within the container" which is disclosed in Putnam (column 11, line 17 through column 12, line 12).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided an oxygen indicator comprising a luminescent compound in the container of Speer in order to provide detection of oxygen in the packaging accurately as taught or suggested by Putnam.

The difference between the instant claim and Speer is that Speer fails to disclose an oxygen indicator which comprises all or part of a printed image.

Inoue discloses an oxygen indicator which comprises all or part of a printed image (column 3, line 34 through column 4, line 19) in packaging for the purpose of providing decorative indication of the presence of oxygen in packaging.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided an oxygen indicator which comprises all or part of a printed image in the package of Speer in order to provide decorative indication of the presence of oxygen in packaging as taught or suggested by Inoue.

In claims 2 and 4 applicant recites various layer configurations for the barrier, scavenger and indicator layers. A rearrangement of the essential working components of a product absent clear and convincing evidence of an unexpected result is obvious and well within the level of one of ordinary skill in the art (MPEP 2144) especially since Putnam suggests that the indicator can be an inner or outer layer and Speer discloses a variety of configurations for the layers in a container as discussed above. Therefore it would have been obvious to configure the layers as recited by applicant in order to prevent ingress of oxygen and to accurately detect the ingress of oxygen (applies to instant claims 2 and 4).

Putnam discloses wherein the oxygen barrier layers that substantially shield the oxygen indicator from oxygen in the environment surrounding the container, and from oxygen in any headspace within the container, are selected from the group consisting of discrete layers with a relatively low oxygen transmission rate, and adhesive or other

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layers which allow limited ingress of oxygen, but at a rate that allows the indicator to be monitored for an indication of the presence or absence of oxygen dissolved in the solid material carrying the oxygen scavenger, without significant influence from atmospheric effects (column 11, line 17 through column 12, line12) (applies to instant claim 31).

ANSWERS TO APPLICANT'S ARGUMENTS

6. Applicant's arguments filed 10/26/06 have been carefully considered but are deemed unpersuasive.

Applicant has argued that Putnam teaches away from a printed image. However, the disclosure (column 1, lines 54-65) is in reference to the prior art not Putnam's own invention. Although Putnam do not provide an image per se, there is no direct teaching away from providing an oxygen indicator as an image. Note that the act of printing is a method limitation which does not carry patentable weight (2113). The question of patentability is whether it is obvious to provide the oxygen indicator as an image.

Applicant has argued that Inoue discloses its oxygen indicator for use in head space scavenging of a gaseous medium inside a package. However, Inoue is not relied upon for any showing of head space oxygen indication. Inoue is relied upon to show that providing an oxygen indicator in the form of an image was well known and obvious at the time of applicant's invention for the purpose of providing an oxygen indicator in decorative, easily recognized form.

Conclusion

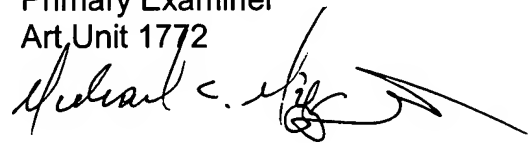
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCM
January 22, 2007

Michael C. Miggins
Primary Examiner
Art Unit 1772

A handwritten signature in black ink, appearing to read "Michael C. Miggins", with a stylized flourish at the end.